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EXAMINER
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BIAGINI, CHRISTOPHER D

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/299,684  
Filing Date: April 26, 1999  
Appellant(s): BHATTI ET AL.

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John P. Wagner, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 9, 2008 appealing from the Office action mailed September 4, 2008.

Art Unit: 2442

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 2442

**(8) Evidence Relied Upon**

6,038,598	DANEELS	03-2000
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6,314,463	ABBOTT	11-2001
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Engelschall, Ralf S. "Apache HTTP Server Version 1.3: Module mod\_rewrite". Archived on January 11, 1998 by the Internet Archive: <[http://web.archive.org/web/19980111100041/www.apache.org/docs/mod/mod\\_rewrite.html](http://web.archive.org/web/19980111100041/www.apache.org/docs/mod/mod_rewrite.html)>. Pages 1 to 18.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 8-12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daneels (US Patent No. 6,038,598) in view of Engelschall ("Apache HTTP Server Version 1.3: Module mod\_rewrite"), and further in view of Abbott et al. (US Patent No. 6,314,463, hereinafter "Abbott").

Regarding claim 1, Daneels shows a data service system in a data service network system, comprising:

- a content server (comprising the web server in server system 14) that statically stores a plurality of content files for access by external access requests ("web page sets": see col. 2, lines 34-39), wherein a first of said plurality of content files comprises content stored in a full content format (a set containing large amounts of information and video size) and wherein a second of said plurality of content files comprises corresponding content stored in an adapted content format which

Art Unit: 2442

is less resource-intensive to serve than the full content format (a set containing smaller files such as still images: see col. 3, lines 26-36); and

- an adaptive load control system (the system comprising state setting device 38, state information database 18, and URL-to-file mapping logic 16) coupled to said content server to pass the access requests to said content server (see Fig. 1), wherein the adaptive load control system modifies an access attempt to access said second of said plurality of content files instead of said first of said plurality of content files when said content server is in an overload condition such that said content server is maintained at safe load conditions (see col. 2, line 56 to col. 3, line 15 and col. 3, lines 26-36), said adaptive load control system comprising:
  - a load monitor (state setting device 38) that monitors the load condition of said content server (see col. 3, lines 19-22 and 26-29).

Daneels further shows that the different content files have different access request addresses (see col. 2, line 58 to col. 3, line 2) and that requests are redirected between those addresses (see col. 3, lines 62-67), but does not explicitly show that the adaptive load control system modifies the access attempt by modifying a URL (Universal Resource Locator) of an access request address. Engelschall shows modifying access request attempts by modifying a URL of an access request address (see Summary on p. 1, discussion of `RewriteRule` directive on p. 11, and discussion of `proxy` flag on p. 13). Because both Daneels and Engelschall teach methods for modifying access request attempts, it would have been obvious to one of ordinary skill in the art to substitute one method for the other in order to achieve the predictable result of transparently redirecting users to a different URL.

Art Unit: 2442

Daneels further does not show that the load monitor establishes the load condition of said content server by measuring an amount of time between when the content server receives the external access request and when said content server provides the external access request.

Abbott shows a load monitor that monitors the load condition of a content server without requiring monitoring of the network, said load monitor establishing the load condition of said content server by measuring an amount of time between when a content server receives the external access request and when said content server provides the external access request (see col. 2, line 54 to col. 3, line 31 and col. 10, line 65 to col. 11, col. 3). It would have been obvious to one of ordinary skill in the art to modify the invention of Mogul with the load monitoring system taught by Abbott in order to measure server response time without the measurement being skewed by varying network performance (see Abbott, col. 1, line 66 to col. 2, line 5).

Regarding claim 2, the combination of Daneels, Engelschall, and Abbott further shows wherein said the adaptive load control system modifies the access request address to access said first of said plurality of content files to access the content in the full content format instead of in the adapted format when said content server is not in the overload condition (comprising a server load of less than 50%: see Daneels, col. 3, lines 6-36).

Regarding claim 3, the combination of Daneels, Engelschall, and Abbott further shows wherein the adaptive load control system further comprises a content adapter (URL to file mapping logic 16) coupled to said load monitor and said content server to modify the access request address (see Engelschall, p. 13) to access the corresponding said second of said plurality

Art Unit: 2442

of content files to access content in the adapted content format instead of in the full content format when the load monitor indicates that said content server is in the overload condition (see Daneels, col. 3, lines 26 to 36 and 62-67).

Regarding claim 4, the combination of Daneels, Engelschall, and Abbott further shows wherein said adaptive load control system further comprises an adaption controller coupled to said load monitor and said content adapter to cause said content adapter to modify the access request address (see Engelschall, p. 13) to access said second of said plurality of content files to access content in the adapted content format instead of in the full content format when said load monitor indicates that said content server is in the overload condition (see Daneels, col. 3, lines 26 to 36).

Regarding claim 5, the combination of Daneels, Engelschall, and Abbott further shows wherein said adaption controller determines if said content server is in the overload condition by comparing the load information received by said load monitor against a predetermined desired load value of said content server (the predetermined load value comprising a value of 50%: see Daneels, col. 3, lines 10-12 and 62-67).

Regarding claim 6, the combination of Daneels, Engelschall, and Abbott further shows wherein said content adapter modifies the access request address to access said first of said plurality of content files to access content in the full content format instead of in the adapted

Art Unit: 2442

content format when said load monitor indicates that said content server is not in the overload condition (comprising a server load of less than 50%: see Daneels, col. 3, lines 10-12).

Regarding claim 8, the combination of Daneels, Engelschall, and Abbott further shows wherein for each of said plurality of content files, said content server includes a service directory that directs the modified access request address to access said first of said plurality of content files and said second of said plurality of content files (comprising the component which stores associates between page sets and state variables: see Daneels, col. 3, lines 10-12 and col. 4, lines 23-34).

Claim 9 is a method claim corresponding to claim 1 and is rejected for the same reasons as given above.

Regarding claim 10, the combination of Daneels, Engelschall, and Abbott further shows modifying the access request address to access said first of said plurality of content files statically stored in said content server instead of said second of said plurality of content files statically stored in said content server format when said content server is determined not to be in the overload condition (comprising a server load of less than 50%: see Daneels, col. 3, lines 6-36).

Regarding claim 11, the combination of Daneels, Engelschall, and Abbott further shows wherein the determining load condition further comprises:



Art Unit: 2442

- obtaining the actual load condition of said content server using a load monitor (comprising the state setting device setting a state variable, where server load is a state variable: see Daneels, col. 3, lines 19-22 and col. 4, lines 35-37) ; and
- comparing the actual load condition with a predetermined desired load condition to determine if said content server is in the overload condition (see Daneels, col. 3, lines 62-67).

Regarding claim 12, the combination of Daneels, Engelschall, and Abbott further shows wherein the modifying the access request address is performed by modifying a URL of the access request address (see Engelschall, p. 1).

Regarding claim 15, the combination of Daneels, Engelschall, and Abbott further shows wherein the determining load condition of said content server is performed within said content server (see Daneels, col. 3, lines 26-29).

#### **(10) Response to Argument**

Appellant argues independent claims 1 and 9 together, and dependent claims 2-6, 8, 10-12, and 15 are asserted to be patentable only by virtue of their dependency on claims 1 or 9. The Examiner will address the arguments in the order they are presented in the brief.

Regarding the argument that Daneels “teaches away from ‘wherein the adaptive load control system modifies an access request address to access said second of said plurality of

Art Unit: 2442

content files instead of said first of said plurality of content files by modifying a URL (Universal Resource Locator) of the access request address when said content server is in an overload condition such that said content server is maintained at safe load conditions,”” the Examiner disagrees. The Appellant submits Daneels “teaches away” from the combination because the reference discloses mapping multiple web pages to a single URL. First, this cannot constitute “teaching away” because it does not criticize, discredit, or otherwise discourage the solution claimed. Second, this argument mischaracterizes both Daneels and the Appellant’s own invention. In much the same way as described at pp. 13-14 of Appellant’s specification, Daneels provides users with a URL to use when requesting content. For example, Daneels describes users accessing a document at “http://server/infostart.html.” Then, and again in much the same way as described in Appellant’s specification, Daneels returns a document located at a different URL depending on the server’s load condition. See col. 3, lines 10-15. Thus, Daneels is in fact very similar to Appellant’s claimed solution, and does not teach away from it.

Regarding the argument that Daneels “teaches away from the suggested modification and combination with Engelschall,” the Examiner disagrees. Appellant essentially repeats the argument addressed above, and thus the Examiner disagrees for the reasons given above.

Appellant next argues that Engelschall “does not overcome the shortcomings of Daneels,” but does not explain why. Instead, Appellant again repeats the argument that Daneels teaches away from the claimed solution, and the Examiner again disagrees for the reasons given above.

Regarding the argument that the proposed modification changes the principle of operation of Daneels from "mapping a plurality of web page sets to a single URL" to "a system which modifies a request address URL to a plurality of request address URLs," the Examiner disagrees. Nothing in the combination changes an aspect of Daneel in such a way as to prevent Daneel from operating. Daneels operates by accepting an incoming request for a URL and redirecting the request to a particular web page based on server load. Note that each web page has its own URL (for example, `http://server/d1/entry.html` and `http://server/d2/entry.html`). See col. 3, lines 10-15. There are numerous ways to accomplish this redirection, such as simply providing the appropriate file (an "internal rewrite," which is the method disclosed by Daneels), asking the client to reconnect using the new URL (an "external redirect"), and modifying the request address to access the new URL (rewriting the URL). Incidentally, the Engelschall reference discusses all of these possibilities. (See Summary on p. 1 and discussion of the RewriteRule and its proxy flag on pp. 11 and 13.) Regardless, all three methods accomplish the same thing for the same reason, and are thus perfectly compatible with one another. More particularly, the internal rewrite disclosed by Daneels achieves the same result (transparently providing the user with an appropriate document) as modifying the request address in the manner taught by Engelschall. Therefore, the proposed modification does not change the principle of operation of Daneels.

Regarding the argument that the motivation for combining the inventions of Daneels and Engelschall is lacking, the Examiner respectfully disagrees. First, as described above, the

Art Unit: 2442

substitution of one redirection method for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Second, given the finite number of predictable solutions detailed above, it would have been “obvious to try” each of them. Given that a person of ordinary skill has good reason to pursue the known options within his or her technical grasp, and that the proposed modification would lead to the anticipated success, the combination is not the product of innovation but of ordinary skill and common sense.

Appellant next argues that “modifying a URL is not interchangeable with redirecting to a different URL,” but does not explain why. Instead, Appellant repeats the argument that the suggested modification would change the principle of operation of Daneels. The Examiner disagrees for the reasons given above.

Regarding the argument that Abbott does not overcome the shortcomings of Daneels and Engelschall because Daneels teaches away from the combination and the modification would change the principle of operation of Daneels, the Examiner disagrees for the reasons given above.

Regarding the argument that Abbott does not overcome the shortcomings of Daneels and Engelschall because Abbott does not teach or suggest “wherein the adaptive load control system modifies an access request address to access said second of said plurality of content files instead of said first of said plurality of content files by modifying a URL (Universal Resource Locator) of the access request address when said content server is in an overload condition such that said

Art Unit: 2442

content server is maintained at safe load conditions," the Examiner disagrees because Abbott was not specifically relied upon for this feature. Similarly, Abbott was not specifically relied upon to "provide a motivation to combine Daneels and Engelschall as suggested."

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Christopher Biagini/  
Examiner, Art Unit 2442

/Andrew Caldwell/  
Supervisory Patent Examiner, Art Unit 2442

Conferees:

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